IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 2568 OF 2006

BABUBHAI @ ZAVERCHAND HARJIVAN SETH.. PETITIONER

Versus

THE DIVISIONAL COMMISSIONER & ORS. RESPONDENTS

Smt. Sandhya Y. Mohite for petitioner

Ms. P. H. Kantharia, APP

CORAM:-SMT. RANJANA DESAI &
D. B. BHOSALE, JJ.

DATED:-5/4/2007

P.C.

. This is a petition filed through jail. The petitioner has made two prayers out of which first prayer is that on account of illness of his wife he may be released on parole. The learned counsel for the petitioner fairly stated that the petitioner will file an application for parole before the concerned authority which he has not done so far. We accept the said statement. The petitioner may file an application for parole attaching thereto necessary medical certificate. If such an application is filed, the concerned authority shall

consider it in accordance with law expeditiously.

2. The second prayer of the petitioner is that an amount of Rs.10,000/- which was deposited by him with the prison authorities when he was released on furlough, has been forfeited by the prison authorities, and that may be ordered to be returned to him.

3. It appears that on 3/5/06 the petitioner was ordered to be released on furlough. He was to surrender on 29/5/06. On 20/5/06 the petitioner preferred an application for extension of furlough leave. That application was pending. On 24/5/06 the petitioner filed a writ petition in this court praying that his furlough leave may be extended. This court recorded the statement of the advocate of the petitioner that the petitioner had already applied for extension of his furlough leave on 20/5/06 and it is not decided till this date. In the circumstances this court directed the authorities to decide the application of the petitioner expeditiously, if it was still pending, within one week from the date of receipt of the order. The petition was dismissed as withdrawn.

4. It appears that on 10/6/06 the petitioner was arrested. The prison authorities have forfeited the amount of Rs.10,000/- on the ground that the petitioner had not surrendered to the jail after the expiry of furlough leave and that he has committed breach of conditions of his release on furlough.

5. The learned counsel for the petitioner states that the amount of Rs.10,000/- may be returned to the petitioner because the petitioner was prosecuting a legal remedy under the bonafide belief that his furlough leave application was pending.

6. The learned APP on the other hand drew our attention to the affidavit of V. G. Khandare, Jailor, Group-II, Kolhapur Central Prison, Kolhapur. She submitted that the petitioner's pending application was dismissed by the prison authorities on 24/5/06 and the petitioner was informed about it by Fax. She submitted that in a subsequent statement of the petitioner, the petitioner has admitted that he was so informed.

7. We are not happy with this explanation. There is no cogent evidence apart from the alleged statement of the petitioner recorded while the petitioner was in custody that the Fax message was received by him. The facts clearly indicate that during the relevant period the petitioner was in fact prosecuting legal remedy. He was under a bonafide belief that his application for extension of furlough leave was pending.

8. It is pertinent to note that on 12/6/06 when this petition was disposed of the learned APP has not informed this court that on 24/5/06 the prison authorities had rejected the application of the petitioner. If in fact the application was rejected, the learned APP ought to have informed the court about this fact. In the circumstances, we are not satisfied with the explanation offered by the prison authorities.

9. It is also pertinent to note that the petitioner has been adequately punished for late surrender. We are informed that the petitioner's 24 days' remission has been cut. In the peculiar facts and circumstance, therefore, we direct the prison authorities to return Rs.10,000/- to the

petitioner. Petition is disposed of.

10. This order may be communicated to the prisoner in jail.

JUDGE.

JUDGE.